

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS

JOSE AMILCAR ESCOBAR,

Plaintiff,

CASE NUMBER:

V.

I.C. SYSTEMS INC. and EXPERIAN.,

Defendant.

\_\_\_\_\_/

**TO: Lu Ann Trevino**  
**2950 North Loop West, Suite 500**  
**Houston, Texas 77092**

**NOTICE OF REMOVAL**

Removing Party, EXPERIAN INFORMATION SOLUTIONS, INC., (“EXPERIAN”), by and through its undersigned attorneys, and pursuant to 28 U.S.C. §§ 1331, 1441, 1446 and Rule 81(c) of the Federal Rules of Civil Procedure, file this, its Notice of Removal and state as follows:

1. The above-styled action was commenced against the Removing Party in the County Civil Court at Law Number 1 of Harris County, Texas, case number 933622.
2. On February 11, 2009, Experian was served with a copy of the Original Petition and Citation.
3. The Original Petition purports to be an action for willful noncompliance pursuant to the FCRA, 15 U.S.C. §§ 1681 – 1681u.
4. Title 28 U.S.C. § 1331 provides that “The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

5. Because the alleged causes of actions arise in Harris County, Texas, the United States District Court for the Southern District of Texas is the appropriate venue upon which to have this action removed.

6. Pursuant to 28 U.S.C. § 1446(a) and in accordance with FED. R. CIV. P. 11, Removing Party hereby files in the United States District Court for the Southern District of Texas this Petition as notice of removal and as Removing Party's short and plain statement of the grounds for removal.

7. Copies of all process, pleadings, and orders served upon Removing Party in this action are attached hereto as Exhibit A.

8. According to the clerk of the County Civil Court at Law Number 1 of Harris County, Texas, co-Defendant I.C. Systems, Inc. has not yet been served in this matter and therefore can not consent to removal of this action.

9. This notice is filed with this Court within 30 days of service on Removing Party of Plaintiff's Summons and Complaint in the above-styled action.

**WHEREFORE**, Removing Party, respectfully requests that this court remove the above-styled action from the County Civil Court at Law Number 1, in and for Harris County, Texas, to the United States District Court for the Southern District of Texas.

March 9, 2009

Respectfully submitted,

/s/ Nicole M. Perry

Nicole M. Perry

Federal ID No. 725420

Texas State Bar No. 24056367

JONES DAY

717 Texas, Ste. 3300

Houston, Texas 77002-2712

Telephone: (832) 239-3939

Facsimile: (832) 239-3600

ATTORNEYS FOR DEFENDANT  
EXPERIAN INFORMATION SOLUTIONS,  
INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served via facsimile and certified mail, return receipt requested, upon counsel for all parties as follows on March 9, 2009.

Lu Ann Trevino  
2950 North Loop West, Suite 500  
Houston, Texas 77092

*Attorney for Plaintiff*

/s/ Nicole M. Perry  
Nicole M. Perry

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**Jose Amilcar Escobar,**

**Plaintiff,**

**v.**

**I.C. Systems Inc. and Experian,**

**Defendant.**

**CASE NO. \_\_\_\_\_**

**INDEX OF DOCUMENTS FILED WITH DEFENDANT EXPERIAN  
INFORMATION SOLUTION, INC.'S NOTICE OF REMOVAL**

Pursuant to S.D. Tex. Local Rule 81, Defendant Experian Information Solutions, Inc. ("Experian") attaches this Index of Documents Attached to Experian's Notice of Removal:

1. County Civil Court Docket Sheet
2. Plaintiff's Original Petition
3. Citation to Experian Information Solutions, Inc.
4. Constable's Return regarding Citation to Experian Information Solutions, Inc.
5. Defendant Experian Information Solutions, Inc.'s Original Answer and Affirmative Defenses
6. List of All Counsel of Record



\*NATURE OF PROCEEDINGS:OP OC DATE OPENED:01-29-2009 JURY FEE PD: .  
 \* CLSD BOX NO: .  
 \*PLAINTIFF: ESCOBAR JOSE AMILCAR .  
 \*PLNT ATTY: LU ANN TREVINO 0024008180 .  
 \*DEFENDANT: I C SYSTM INC ETAL 13753 PIKE ROAD MO CITY 459 .  
 \*DEFN ATTY: .  
 \*C.DOCKET.SUB. .DATE FLD.TYPE OF . OL.  
 \*N.NUMBER.DKT.FILM CODE.MMDDYYYY.TRNSACTN.DESCRPTION OF TRANSACTION CN.  
 \*===== .  
 1 933622 001 761965438 01292009 CSH RECP CR #614397 AMT \$190.00 PAID 01  
 \* THRU 5438 BY LU ANN TREVINO 2  
 \* ESCOBAR JOSE AMILCAR VS 3  
 \* I C SYSTEMS INC ETAL 4  
 \* PET.FILED 2 CIT.(S)TO BE ISSUED 5  
 \* OUT OF COUNTY 6  
 \* RETURN TO ATTORNEY 7  
 1 933622 001 761965439 01292009 OP OC ORIGINAL PETITION FILED 01  
 \* THRU 5443 2  
 1 933622 001 761972182 01302009 CIT ISS JOSE AMILCAR ESCOBAR VS 01  
 \* THRU 2182 I C SYSTM INC ETAL 2  
 1 933622 001 761972183 01302009 CIT ISS JOSE AMILCAR ESCOBAR VS 01  
 \* THRU 2183 I C SYSTM INC ETAL 2  
 1 933622 001 762915986 02242009 CIT RET TO EXPERIAN 02-11-09 01  
 \* THRU 5987 APPR DATE 2  
 \* 3-9-09 3  
 1 933622 001 762916007 02242009 LTR FROM HEATHER GRAHAM 01  
 \* THRU 6007 2  
 1 933622 001 762924503 02242009 CSH RECP CR #617674 AMT \$4.00 PAID 01  
 \* THRU 4503 BY LU ANN TREVINO 2  
 \* ESCOBAR JOSE AMILCAR VS 3  
 \* I C SYSTM INC ETAL 4  
 \* ALIAS CITATION TO BE ISSUED 5  
 \* SEE LETTER 6  
 \* OOC - RETURN TO ATTORNEY 7  
 1 933622 001 762924504 02242009 REQUEST ALIAS CITATION 01  
 \* THRU 4504 2  
 1 933622 001 762950827 02272009 CIT ISS ESCOBAR JOSE AMILCAR VS 01  
 \* THRU 0827 EXPERIAN ETAL 2  
 \* TO I.C. SYSTEMS INC., IS A TEXAS 3  
 \* CORPORATION BY SERVING ITS REGISTER 4  
 \* CT CORPORATION STSTEM 5

ACERTIFIED COPY

MAR 09 2009

ATTEST  
 BEVERLY B. KAUFMAN, County Clerk  
 Harris County, Texas

  
 Andrew Palomo

Deputy

END REPORT

A CERTIFIED COPY

MAR 09 2009

ATTEST:  
BEVERLY B. KAUFMAN, County Clerk  
Harris County, Texas

  
Deputy  
Andrew Palomo

933622

C.C.C.L. # 1 COPY

CAUSE NO. \_\_\_\_\_

JOSE AMILCAR ESCOBAR

VS.

I.C. SYSTEMS INC  
and  
EXPERIAN

§  
§  
§  
§  
§  
§  
§

IN THE COUNTY CIVIL COURT

AT LAW NUMBER \_\_\_\_\_

OF HARRIS COUNTY, TEXAS

RECEIVED  
2009 JAN 29 PM 3:24  
HARRIS COUNTY CLERK  
JAN 29 2009

**ORIGINAL PETITION**

COMES NOW, JOSE AMILCAR ESCOBAR, Plaintiff, and files this Original Petition, and by way of such Petition would respectfully show the Court:

**I. LEVEL TWO CASE**

The damages caused to Plaintiff in this matter exceed \$50,000. Accordingly, the Plaintiff requests that this case be designated as a level two case for discovery purposes pursuant to Texas Rules of Civil Procedure §190 *et. seq.*

**II. PARTIES**

JOSE AMILCAR ESCOBAR is an individual resident of Houston, Harris County, Texas.

Based upon information and belief, Defendant, I.C. SYSTEMS INC., is a Texas corporation doing business in the State of Texas. Service of citation upon Defendant may be had by delivery to its registered agent Jacque R. McCroskey, 13753 Pike Road, Missouri City, Texas 77459

Based upon information and belief, Defendant, EXPERIAN, is a Texas corporation doing business in the State of Texas. Service of citation upon Defendant may be had by delivery to its registered agent CT Corporation System, 350 N. Saint Paul Street, Dallas, Texas 75201.

### **III. JURISDICTION AND VENUE**

This Court has subject matter jurisdiction over Plaintiff's causes of action for violations of the Fair Credit Reporting Act (FCRA) and the Fair Debt Collection Practices Act (FDCPA). Plaintiff was a resident of Harris County, Texas when said causes accrued. Pursuant to § 15.017 of the Civil Practice & Remedies Code, venue is proper in Harris County, Texas.

### **IV. BACKGROUND FACTS**

On February 15, 2008, Plaintiff learned his personal identification information was used a person, then unknown, to be treated at a hospital. Plaintiff spoke with a representative from Defendant, I.C. Systems. Plaintiff explained to the representative that the account did not belong to him. Defendant's representative told him that the account belongs to a Mr. Jose Velasquez and the account showed a different birth date than that of the Plaintiff. On February 18, 2008, Plaintiff sent a letter to Defendant, Experian, detailing his findings with an attached affidavit and demanding the account be removed from his credit report. On March 21, 2008, Defendant, Experian, sent a updated credit report as a response stating to contact the Defendant, I.C. Systems. Experian also stated in the letter that the account information was disputed by consumer (Meets requirement of the FCRA) and the results of the investigation would be sent to his current creditors.

### **V. Causes of Actions**

I.C. Systems wilfully failed to provide Plaintiff a copy of the fraudulent credit application in violation of the Fair and Accurate Credit Transaction Act of 2003 (FACTA) amending the Fair Credit Reporting Act (FCRA). 15 U.S.C. §§ 1681 - 1681u. I. C. Systems also wilfully used deceptive means to collect a debt in violation of FDCPA. 15 U.S.C. § 1692e(10). Because of Defendant's wilful conduct, Plaintiff has suffered extreme emotional distress far beyond mere

frustration or anger. Said conduct was a direct, proximate, and producing cause of damage to JOSE AMILCAR ESCOBAR.

Experian wilfully failed to maintain reasonable procedures to assure maximum possible accuracy of Plaintiff's credit report in violation of 15 U.S.C. § 1681e(b). Defendant wilfully failed to delete inaccurate information. 15 U.S.C. § 1681i(a). These failures were the proximate cause of damage to Plaintiff who was refused credit due to the erroneous information in his credit report. Because of Defendant's wilful conduct, Plaintiff has suffered extreme emotional distress far beyond mere frustration or anger. Said conduct was a direct, proximate, and producing cause of damage to JOSE AMILCAR ESCOBAR.

#### **VI. Damages**

As a result of Defendants' wilful actions and omissions, Plaintiff was damaged in the amount of \$75,000.00. Plaintiff seeks actual damages, punitive damages, reasonable and necessary attorneys fees, costs of court, legal expenses, and pre- and post-judgment interest.

#### **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, JOSE AMILCAR ESCOBAR respectfully requests that, upon trial of this matter, he be awarded the economic damages produced and proximately caused by Defendants' violations of the FDCPA and FCRA, punitive damages, reasonable and necessary attorney's fees, legal expenses, cost of Court and pre- and post-judgment interest. Plaintiff further prays for any other and further relief, at law and in equity, to which he may show himself to be justly entitled.

Respectfully submitted,

THE TREVIÑO LAW FIRM

By:

A handwritten signature in black ink, appearing to read "Lu Ann Treviño", written over a horizontal line.

Lu Ann Treviño  
Texas Bar No. 24008180  
2950 North Loop West, Suite 500  
Houston, Texas 77092  
(713) 341-7550 - Telephone  
(888) 896-2102 - Facsimile

**ATTORNEY FOR PLAINTIFF**

**VERIFICATION**

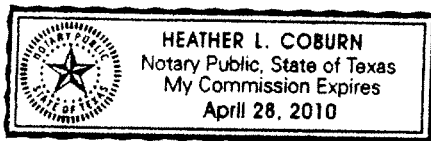
THE STATE OF TEXAS     §  
COUNTY OF HARRIS     §

Before me, the undersigned authority, on this day personally appeared JOSE AMILCAR ESCOBAR, who being by me duly sworn upon his oath deposed and said that he has read the above and foregoing Original Petition and that the factual assertions contained therein are within his personal knowledge and are true and correct, and that the exhibits attached thereto are within his personal knowledge and are true and correct copies of what they are represented to be.

Jose A Escobar  
JOSE AMILCAR ESCOBAR

SUBSCRIBED AND SWORN TO BEFORE ME on this 18<sup>th</sup> day of December 2008.

Heather L. Coburn  
Notary Public in and for  
The State of Texas



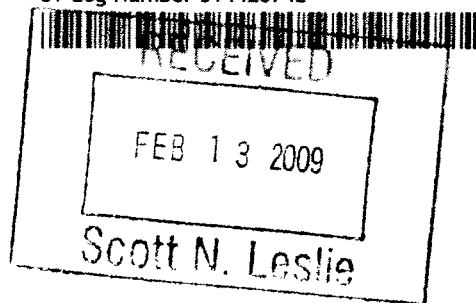
My Commission Expires: 4/28/10



**Service of Process  
Transmittal**

02/11/2009

CT Log Number 514428742



**TO:** Scott Leslie, General Counsel Experian Americas  
Experian  
475 Anton Blvd  
Costa Mesa, CA 92626-

**RE: Process Served in Texas**

**FOR:** Experian (Cross Ref Name) (Domestic State: OH)  
Experian Information Solutions, Inc. (True Name)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** Jose Amilcar Escobar, Pltf. vs. I.C. Systems Inc and Experian, Dfts.  
**DOCUMENT(S) SERVED:** Citation, Original Petition, Verification  
**COURT/AGENCY:** County Civil Court at Law No. 1 of Harris County, TX  
Case # 933622  
**NATURE OF ACTION:** Wrongful credit reporting  
**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Dallas, TX  
**DATE AND HOUR OF SERVICE:** By Process Server on 02/11/2009 at 09:45  
**APPEARANCE OR ANSWER DUE:** By 10:00 a.m. on the Monday next following the expiration of 20 days  
**ATTORNEY(S) / SENDER(S):** Lu Ann Trevino  
The Trevino Law Firm  
2950 North Loop West, Suite 500  
Houston, TX 77092  
713-341-7550  
**ACTION ITEMS:** SOP Papers with Transmittal, via Fed Ex 2 Day , 790648974760  
**SIGNED:** C T Corporation System  
**PER:** Beatrice Casarez  
**ADDRESS:** 350 North St Paul Street  
Suite 2900  
Dallas, TX 75201  
**TELEPHONE:** 214-932-3601

DOCKET NUMBER:933,622

RECEIPT NUMBER:OOC NO SHERIFF/CONSTABLE FEE COLLECTED

FOR COUNTY CLERK USE ONLY

JOSE AMILCAR ESCOBAR

PLAINTIFF

VERSUS

I.C. SYSTEMS INC  
AND  
EXPERIAN  
DEFENDANT

THE STATE OF TEXAS

ORIGINAL PETITION CITATION

TO:EXPERIAN, IS A TEXAS CORPORATION BY SERVING ITS REGISTERED AGENT CT  
CORPORATION SYSTEM

350 N. SAINT PAUL STREET, DALLAS, TEXAS 75201

THIS PROCESS WAS DELIVERED  
AT 11:00 O'CLOCK A.M.  
ON THE 30TH DAY OF JANUARY  
BY DEPUTY CONSTABLE, PRECINCT 1  
DALLAS COUNTY, TEXAS

ATTACHED IS A COPY OF PETITION .

THIS INSTRUMENT WAS FILED ON THE 29TH DAY OF JANUARY, 2009, IN THE ABOVE  
CITED CAUSE NUMBER AND COURT. THE INSTRUMENT ATTACHED DESCRIBES THE CLAIM  
AGAINST YOU.YOU HAVE BEEN SUED. YOU MAY EMPLOY AN ATTORNEY. IF YOU OR YOUR  
ATTORNEY DO NOT FILE A WRITTEN ANSWER WITH THE COUNTY CLERK WHO ISSUED THIS  
CITATION BY 10:00 A.M. ON THE MONDAY NEXT FOLLOWING THE EXPIRATION OF  
TWENTY DAYS AFTER YOU WERE SERVED THIS CITATION AND PETITION, A DEFAULT  
JUDGMENT MAY BE TAKEN AGAINST YOU.ISSUED AND GIVEN UNDER MY HAND AND THE SEAL OF SAID COURT, AT HOUSTON,  
TEXAS, THIS, 30TH DAY OF JANUARY, 2009.

(SEAL)

BEVERLY B. KAUFMAN COUNTY CLERK  
COUNTY CIVIL COURT AT LAW NO. 1,  
201 CAROLINE, ROOM 300  
HARRIS COUNTY, TEXAS

*Christine E Fenwick*  
CHRISTINE E FENWICK  
DEPUTY COUNTY CLERK

REQUESTED BY:THE TREVINO LAW FIRM  
LU ANN TREVINO  
2950 NORTH LOOP WEST, STE 500  
HOUSTON, TEXAS 77092

1 OF 1



3. Plaintiff's claims for negligence against Experian are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

4. All claims against Experian are barred because all information Experian communicated to any third person regarding Plaintiff was true.

5. Experian alleges that any purported damages allegedly suffered by Plaintiff are the result of the acts or omissions of third persons over whom Experian had neither control nor responsibility.

6. Plaintiff's alleged damages were not caused by Experian, but by an independent intervening cause.

7. Plaintiff has failed to mitigate his alleged damages.

8. Plaintiff's Petition and each claim for relief therein is barred by laches.

9. Plaintiff's Petition and each claim for relief therein is barred by the applicable statute of limitations.

10. Experian alleges that any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff himself and resulted from Plaintiff's own actions which equaled or exceeded any alleged negligence or wrongdoing by Experian.

11. Any damages which Plaintiff may have suffered, which Experian continues to deny, were the direct and proximate result of the conduct of Plaintiff. Therefore, Plaintiff is estopped and barred from recovery of any damages.

12. The Petition, and each claim for relief therein that seeks equitable relief, is barred by the doctrine of unclean hands.

13. Experian alleges that it at all times followed reasonable procedures to assure the maximum possible accuracy of the credit information pertaining to Plaintiff.

14. Experian alleges that Plaintiff may have failed to follow procedures required by the Fair Credit Reporting Act in the event that a consumer disputes the completeness or accuracy of any item of information contained in Experian's credit file.

15. Plaintiff is not entitled to recover actual, punitive or exemplary damages under the Fair Credit Reporting Act because Experian has not negligently or willfully failed to comply with the Fair Credit Reporting Act.

16. Experian asserts that Plaintiff's Petition, to the extent that it seeks exemplary or punitive damages, violates Experian's rights under the due process and excessive fines clauses of the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, and any analogous provisions of the Texas Constitution.

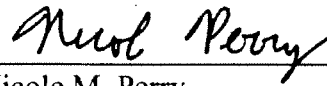
17. Experian reserves the right to assert additional affirmative defenses as such time and to such extent as warranted by discovery and the factual developments in this case.

#### **Prayer**

For these reasons, Experian asks that the Court enter a judgment that Plaintiff take nothing, assess costs and attorney's fees against Plaintiff, and award Experian all other relief to which it is entitled.

March 9, 2009

Respectfully submitted,

A handwritten signature in cursive script, reading "Nicole Perry", positioned above a horizontal line.

Nicole M. Perry  
Texas State Bar No. 24056367  
JONES DAY  
717 Texas, Ste. 3300  
Houston, Texas 77002-2712  
Telephone: (832) 239-3939  
Facsimile: (832) 239-3600

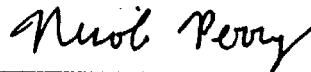
ATTORNEY FOR DEFENDANT,  
EXPERIAN INFORMATION SOLUTIONS,  
INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was served via facsimile and certified mail, return receipt requested, upon counsel of record as follows on March 9, 2009.

Lu Ann Trevino  
2950 North Loop West, Suite 500  
Houston, Texas 77092

*Attorney for Plaintiff*



---

Nicole M. Perry

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**Jose Amilcar Escobar,**

**Plaintiff,**

**v.**

**I.C. Systems Inc. and Experian,**

**Defendant.**

**CASE NO. \_\_\_\_\_**

**LIST OF COUNSEL**

Nicole M. Perry  
Texas State Bar No. 24056367  
JONES DAY  
717 Texas, Ste. 3300  
Houston, Texas 77002-2712  
Telephone: (832) 239-3939  
Facsimile: (832) 239-3600

ATTORNEYS FOR DEFENDANT EXPERIAN INFORMATION SOLUTIONS, INC.

Lu Ann Trevino  
Texas Bar No. 24008180  
The Trevino Law Firm  
2950 North Loop West, Suite 500  
Houston, Texas 77092  
Telephone: (713) 341-7550  
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ATTORNEYS FOR PLAINTIFF JOSE S AMILCAR ESCOBAR